IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No. 50 of 2007

Date of Decision: August 8, 2007

Pritam Chand & ors. … Appellants

Versus

Commissioner of Temple Trust Dharamsala & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice V.K. Ahuja, Judge

Whether approved for reporting?

For the appellant(s) : Mr.R.K.Gautam Sr. Advocate
Mr. Anurag Sharma, Advocate.

For the Respondent(s) : Mr. R.M.Bisht, Deputy Advocate General, for respondents 1 to 3.

Deepak Gupta, J (Oral).

This appeal is directed against the order of a learned Single Judge of this Court in CWP No. 834 of 2005 decided on 24.5.2007. The appellants/petitioners were all workmen engaged by the management of the Temple Trust, Dharamsala, Jawalamukhi, District Kangra. Their services were terminated in the year 1993. They challenged the order of termination of their services on the ground that their termination has been made in violation of the mandatory provisions of Section 25F of the Industrial Disputes Act, hereinafter referred to as the Act. The learned Labour Court decided the case in favour of the workmen vide his order dated 31.5.2001 and held that the petitioners were entitled to

reinstatement of their services with full seniority but would only be entitled to 25% back-wages.

The management feeling aggrieved by the said award, filed CWP No.1027 of 2001 before this Court. During the pendency of the writ petition, the management sent letters to the workmen to join duty during 'Navratra Mela' starting from 17.10.2001 to 26.10.2001. Admittedly, the petitioners did not join their duties. Later, the management issued notices dated 27.7.2001 to the workmen under Section 25F of the Act intimating them that the construction work on which they were engaged as daily wagers stood completed and as there was no work available with the management, therefore, their services were terminated. One month's pay along with retrenchment compensation was sent to each of the workman in compliance with the provisions of Section 25F of the Act. This amount was not accepted by the workmen. The management brought all these facts to the notice of the court in the aforesaid writ petition. This Court after hearing the parties, passed the following orders:

> " The full wages of the workmen has been deposited by the management considering them in service from 1.6.1996 to 31.7.2002 whereas the award of the Labour Court was made on 31st May, 2001. If the workmen are still aggrieved against their termination effected by the management of the temple trust under Section 25F of the I.D.Act, they are at liberty to take appropriate proceedings before an appropriate forum in accordance with law."

As we understand the order, the Court had only given liberty to the workmen to take appropriate proceedings before an appropriate forum to challenge the order of termination effected

by the management against them under Section 25F. The workmen instead of challenging the order of termination filed an application under Section 33C of the Act praying for the implementation of the earlier award on the ground that the same had been upheld by the High Court. The Labour Court came to the conclusion that the respondents somehow intended to get rid of the services of the workmen and, therefore, they resorted to unfair practices by issuing termination order dated 27.7.2002 in utter disregard to the principles of natural justice. Thereafter the Labour Court held that in order to implement the earlier award, the petitioners were entitled to full back wages both under Section 17B of the Act and on the basis of the earlier award and directed that the petitioners be paid their balance amount of full wages from 1.8.2002 till the disposal of the writ petition i.e. 26.5.2004. This order was again challenged by the petitioner before the learned Single Judge and the learned Single held that the workmen could not have sought these back wages without challenging the retrenchment notices served upon them on 23.7.2002.

Shri R.K.Gautam, learned senior counsel for the appellants/petitioners contends that the judgment of the learned Single Judge is illegal and incorrect since the workmen do not seek setting aside of the order of retrenchment dated 23.7.2002 but only seek implementation of the earlier award dated 31.5.2001.

We are not at all impressed upon by this contention. The undisputed fact is that the management, rightly or wrongly, terminated the services of the petitioner on 23.7.2002. This order

had to be challenged in separate proceedings. Unless this order is set aside, the workmen cannot claim any back wages after 23.7.2002. Admittedly, they have been paid their wages upto the said date. We feel that the learned Single Judge has rightly held that the provisions of Section 33C could not have been resorted to in the facts of the present case. We are also constrained to observe that the learned Presiding Officer of the Labour Court virtually sat as an appellate court over the earlier order passed by this Court in CWP No.1027 of 2001. This Court had not granted any relief to the workmen under Section 17B of the Act. The Labour Court had no jurisdiction or authority to hold that the petitioners are entitled to any benefits under Section 17B of the Act. He could not assume the powers of the High Court. Furthermore, when the High Court had observed that the management had brought to its notice the fact that they had terminated the services of the workmen and had also noted that the workmen had been paid their full back wages, the learned Presiding Officer of the Labour Court could not have re-opened these questions in proceedings under Section 33C of the Act.

In view of the above discussion, we find no merit in this appeal which is dismissed in limine.

(Deepak Gupta), J.

August 8. 2007. (V.K.Ahuja), J.

s.